S.B.Civil Second Appeal No.58/07
Mahendra Kaur & ors. vs. Manjeet Kaur & ors.

Date of Order : 01.5.2007

HON'BLE MR. PRAKASH TATIA,J.

Mr. N.L. Joshi for the appellants.

Heard learned counsel for the appellants.

The appellants' grievance is against the dismissal of suit on the ground of limitation.

The plaintiffs filed the suit for specific performance of the contract dated 12.3.1990, on 16.3.1996. According to the learned counsel for the appellants, the appellants entered into agreement on 12.3.1990. In the agreement there was condition that the vendor will seek permission for transfer of the agricultural land and thereafter serve a notice upon the purchaser. According to the learned counsel for the appellants, no permission was obtained by the vendor and therefore, no notice was served upon the plaintiffs by the vendors. However, in the year 1991, the area in question was excluded from the application of restriction of transfer without permission. However, according to the learned counsel for the appellants, despite that the notification was published in the year 1991 but it attained the force of law in the year 2002 only

when it was published in the gazette. According to the learned counsel for the appellants, therefore, the two courts below committed error of law in dismissing the suit of the plaintiffs under assumption that the plaintiffs could have filed the suit for specific performance of the contract immediately after 1991 when the notification was issued by the government. At this place, the two courts below erred in law in not appreciating the legal position that in fact notification was issued by the government excluding the land in question from application of the restriction in the year 1991 but it became law in the year 2002 and, therefore, the plaintiffs' suit could not be held barred by time when it was filed in the year 1996, much before the relevant rule was amended suitably which favoured the plaintiffs.

I considered the submissions of the learned counsel for the appellants and perused the reasons given by the two courts below.

It is not in dispute that the agreement to purchase the land was entered into on 12.3.1990. It is the plea of the plaintiffs that there was a condition in the agreement that vendor will seek permission in accordance with law under the provisions of Rajasthan Colonisation Act and, thereafter, will serve notice upon the plaintiffs, upon which the plaintiffs will get the sale deed

registered in favour of the plaintiffs from the vendors. This is settled law that when there is an agreement for purchase of the property, there is implied condition upon the vendors to do all things so that sale deed can be effected in favour of the vendees which includes seeking permission from the competent authority for sale of the property. The plaintiffs, therefore, could not have remained silent for indefinite period for enforcing the agreement by process of law on the plea that since the vendor did not apply for permission for sale or did not obtain the permission or did not serve a notice after obtaining permission from the competent court for sale of the property.The plaintiffs could have filed the suit for specific performance of the contract with specific plea that the vendor be directed to take permission from the competent authority for sale of land and do all necessary things which they are required to do for affecting the sale in favour of the purchasers. Here in this case, it is not a case of implied condition but it is a specific condition in the agreement giving a right to the purchaser and putting obligation upon the vendor to obtain permission for sale or the property from the competent authorities. Therefore, amendment in the rules and releasing of the land from operation of the restriction of seeking prior

permission was absolutely irrelevant and, for this above reason, the plaintiffs' suit could have been dismissed by the courts below but the courts held the suit to be barred by time on the ground that the amendment in the rule came into force with effect from the year 1991. Even if there is some force in the submission of the learned counsel for the appellants that the amendment in rule was with effect from the year 2002 only then also the plaintiff filed the suit in the year 1996 much before the amendment of rule then the plaintiff could have filed the suit for specific performance of the contract within three years of the contract, then there was all the more reasons for dismissal of suit of the plaintiff as barred by time as it was filed about eight years from the date of agreement.

In substance, there is no substantial question of law is involved in this appeal. Hence the appeal of the appellant is dismissed.

(PRAKASH TATIA),J.

mlt.